REMARKS

This Amendment is in response to the Advisory Action mailed May 16, 2003 and is filed along with a Continued Prosecution Application (CPA). In the Final Office Action, claims 1, 21, 25 and 32 were provisional rejected under the judicially created doctrine of obviousness-type double patenting. In response, Applicants respectfully submit that this issue will be addressed when all claims of the subject application is in condition for allowance. Claims 1-8 and 25-34 have been rejected under 35 U.S.C. § 102(e) while claims 21-23 have been under 35 U.S.C. § 103(a). Applicants have amended claims 1-4, 6, 8, 21, 25 and 32. News claims 35-38 have been added. Hence, claims 1-8, 21-23, and 25-38 remain pending in the application. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

I. REJECTION UNDER 35 U.S.C. §102(E)

Claims 1-8 and 25-34 have been rejected under 35 U.S.C. §102(e) as being anticipated by Bellenger (U.S. Patent No. 5,802,054). The Examiner listed the rejection as applying to claims 1-8 and 25-31, but includes arguments for rejection for claims 32-34. Therefore, Applicants presume that the rejection applies up to claim 34.

As the Examiner is aware, Bellenger discloses an atomic switch for local area networks. The atomic switch includes node route logic coupled to flow detect logic. The flow detect logic monitors frames received by the ports and generates an identifying tag for use in accessing a route table memory. *See column 3, lines 9-11 of Bellenger.* One identifying tag is used for a sequence of frames, and can be used to block frames having the particular identifying tag. *See column 3, lines 16-19 and 52-54 of Bellenger.* Thus, the identifying tag is information added to the frames. *See column 3, lines 52-61 of Bellenger.* The tagging of incoming frames, which modifies the frames, in order to preserve frame ordering poses a number of problems that the claimed invention addresses. *See page 3 (Background Section) of subject application.*

To anticipate a claim under 35 U.S.C. §102(e), <u>Bellenger</u> must teach each and every element of the claims. "A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described, in a single prior art reference." <u>Verdegall Bros. v. Union Oil Co. of California</u>, 814 F.2d 628, 631, U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Herein, <u>Bellenger</u> describe the use of the same identifying tag for all frames in a flow. <u>Bellenger</u>, however, clearly does not describe or even suggest the assignment of a different pointer value to each frame as now claimed.

In addition, since <u>Bellenger</u> utilizes a tagging scheme, which involve modification of the frames themselves, <u>Bellenger</u> does not describe that each pointer value associated with each respective frame is used to preserve a state of frame transmission order *without modifying the respective frame*. (Emphasis added). Evidence of frame modification by the tagging technique of <u>Bellenger</u> is set forth on column 3, lines 53-54 of <u>Bellenger</u>.

Based on the fact that <u>Bellenger</u> does not describe each and every limitation set forth independent claims 1, 25 and 32, Applicants respectfully submit that the these claims are not anticipated by <u>Bellenger</u>. Accordingly, Applicants respectfully request that the outstanding §102(e) rejection be withdrawn.

II. <u>REJECTIONS UNDER 35 U.S.C. §103(A)</u>

Claims 21-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over <u>Bellenger</u>. The Examiner cites "Sellenger" in the Office Action, but Applicants presume that this was a typographical error.

To establish a prima facie case of obviousness, <u>Bellenger</u> must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination must be found in the prior art, not in Applicant's disclosure. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438

(Fed. Cir. 1991). Applicants respectfully submit that claims 21-23, as amended, are not obvious over <u>Bellenger</u> for the reasons and explanations set out above.

In particular, <u>Bellenger</u> does not suggest (1) assigning a *different* pointer value to each frame and (2) each pointer value associated with each respective frame is used to preserve a state of frame transmission order *without modifying the respective frame.* (Emphasis added). Instead, <u>Bellenger</u> utilizes common tags for multiple frames in a flow and utilizes a tagging scheme that modifies of the frames themselves.

Accordingly, Applicants respectfully request that the §103(a) rejection be withdrawn as applied to independent claim 21 and well as those claims dependent thereon.
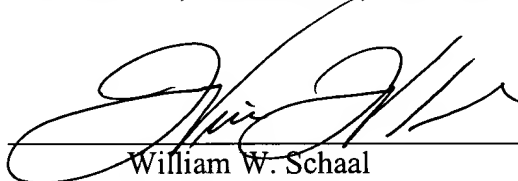
CONCLUSION

In view of the amendments and remarks made above, it is respectfully submitted that the pending claims are in condition for allowance, and such action is respectfully solicited. Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicants hereby request such an extension.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
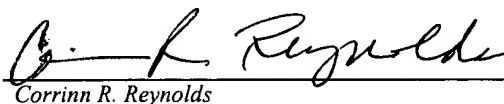
Dated: June 5, 2003

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I hereby certify that this correspondence is being transmitted via facsimile under 37 CFR §1.8 on: June 5, 2003.

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Corrinn R. Reynolds   *Date*